

WILLIAM C. REIMAN
RICHARD H. EDMONDSON

IBLA 80-872

Decided April 15, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring Aurum placer mining claim null and void ab initio. OR 24351 (OR 24000).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers--Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Lands Subject to--Withdrawals and Reservations: Generally--Withdrawals and Reservations: Reclamation Withdrawals

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

2. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Revocation and Restoration

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order

of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

3. Estoppel: Generally--Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment--Mining Claims:
Determination of Validity--Mining Claims: Recordation

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

APPEARANCES: Thomas F. Young, Esq., Baker, Oregon, for appellants.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

William C. Reiman and Richard H. Edmondson appeal from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 21, 1980, declaring the Aurum placer mining claim described in the notice of location as being located in the S 1/2 S 1/2 SW 1/4 sec. 9, T. 12 S., R. 41 E., Willamette meridian, Oregon, null and void ab initio because the lands embraced within the claim were not open to entry under the mining laws on the date of location of the claim, September 22, 1979. BLM stated that the lands in question were included in a withdrawal for the Burnt River Reclamation Project by Public Land Order (PLO) No. 4849 on June 18, 1970, and that the withdrawal is still in effect. ^{1/} PLO 4849 was issued pursuant to the Reclamation Act of June 17, 1902, section 3, 43 U.S.C. § 416 (1970) (repealed in part effective October 21, 1976, Federal Land Policy and Management Act of 1976 (FLPMA), section 704(a), 90 Stat. 2792). PLO 4849 expressly withdrew the lands from appropriation under the mining laws. 35 FR 10360 (June 25, 1970).

^{1/} There is an indication in the case file, which is conceded in appellants' brief, that the actual location of the claim may be the N 1/2 N 1/2 NW 1/4 sec. 16, T. 12 S., R. 41 E., Willamette meridian, Oregon. The discrepancy is not material since PLO 4849 embraces this land also.

In the statement of reasons for appeal, counsel asserts that there was an implied revocation of the withdrawal order. This assertion is based on the fact that Water and Power Resources Service and BLM, the two agencies concerned with the lands, favored restoration of the lands to the public domain prior to the recording of the location notice with BLM, coupled with acceptance for recording by BLM of the notice of location. Appellants contend the Secretary is estopped from claiming that the lands are still withdrawn because BLM accepted appellants' claim for recordation thereby recognizing its validity. Counsel alleges that, relying on the Government's silence regarding the withdrawal, appellants incurred expenses before they were notified of the withdrawal. The issue raised by this appeal is whether the acceptance by BLM of mining claim recordation documents for a claim on land which was withdrawn from entry under the mining laws at the time of location of the claim compels reversal of a decision declaring the claim null and void when revocation of the withdrawal is under consideration at the time the claim was located and recorded with BLM.

[1] There is no issue that PLO 4849 constitutes a first form reclamation withdrawal which withdrew the subject land from entry under the mining laws. 2/ The withdrawal is clearly marked on the copy of the BLM master title plat contained in the case file.

Appellants located their claims on lands included in this withdrawal on September 22, 1979, and filed their notice of location for recordation with BLM on October 15, 1979. It is well established that a mining claim located on a date when the lands are subject to a first form reclamation withdrawal is null and void ab initio. Susan E. Mitchell, 53 IBLA 42 (1981); Sam McCormack, 52 IBLA 56 (1981); Everett E. Willmarth, 32 IBLA 145 (1977). Since the appellants' claim was located subsequent to the withdrawal, it is null and void ab initio.

The portion of section 3 of the Reclamation Act authorizing the Secretary to withdraw lands required for any irrigation works was repealed effective October 21, 1976, by section 704(a) of FLPMA, 90 Stat. 2792 (1976). However, this repeal did not affect reclamation withdrawals extant on this date, which are instead expressly continued, subject to review by the Secretary under section 204 of FLPMA, 43 U.S.C. § 1714 (1976). Sam McCormack, supra at 57.

[2] Appellants contend that there was an implied revocation of the withdrawal order prior to the time they recorded their claim with

2/ Reclamation withdrawals are divided into two categories: "first form" which embraces land that may be needed in the construction and maintenance of irrigation works and "second form" embracing land which may be irrigated from such works. 43 CFR 2322.0-5.

BLM on October 15, 1979. They base this contention on a reference in a memorandum dated August 20, 1980, from the Chief, Branch of Lands and Minerals Operations to the Regional Director, Water and Power Resources Service, in which the Chief communicated certain determinations made "under the provisions of 43 CFR 2372.3," including the conclusion that PLO 4849 should be revoked as to the subject land. The memorandum further expressly recited that "We will soon forward our recommendations and a proposed public land order to the Secretary of the Interior, through the Director, Bureau of Land Management, for approval." The regulations at 43 CFR Subpart 2372 deal with procedures to be utilized for revocation of withdrawals and restoration of land. Nothing contained in these regulations is inconsistent with the express intention to accomplish the revocation and restoration through Departmental channels, including publication of a new public land order revoking the prior withdrawal.

It has long been held that lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn. United States v. Milton Wichner, 35 IBLA 240 (1978); Tenneco Oil Co., 8 IBLA 282 (1972); David W. Harper, 74 I.D. 141 (1967).

Clearly, the withdrawal pertaining to the subject land had not been revoked and the land had not been restored at the time appellants located their claim. Where the land on which a mining claim is located is withdrawn from entry under the mining laws pursuant to a first form reclamation withdrawal at the time the claim is located, it is properly declared null and void ab initio, Susan E. Mitchell, *supra*, and location of such a claim will not be validated by the subsequent modification or revocation of the order of withdrawal to open the land thereafter to mineral entry. Wendell L. Garrett, 39 IBLA 85 (1979).

[3] The recordation of an unpatented mining claim by itself does not render valid any claim which would not otherwise be valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law. 43 CFR 3833.5(a). Further, failure of the Government to notify an owner upon his filing or recording of a claim that such claim is located on lands not subject to location shall not prevent the Government from later declaring the claim void. 43 CFR 3833.5(f); see Sam McCormack, *supra*. Therefore, appellants' contention that receipt for filing of the notice of location constitutes recognition of the validity of the claim upon which a claim of estoppel could be based is without merit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Acting Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

